

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of)
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ARTHUR E UBER III, et al.) Group Art Unit: **3737**
)
Application No.: **09/545,582**) Examiner: **Ruth Smith**
)
Filed: **April 7, 2000**)
)
For: **PATIENT INFUSION SYSTEM**)
FOR USE WITH MRI)

SEVENTH SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

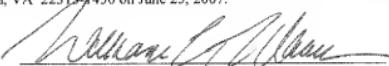
Commissioner for Patents
Washington, DC 20231

Sir:

Applicants hereby submit copies of the references listed on the attached PTO-1449 for consideration in the present case to comply with 37 CFR §1.56.

The references attached hereto include a transcript of a deposition of Mr. Jean-Pierre Lacroix, CEO of Medex Corporation, taken in the District Court of Annecy, France on March 1, 2007 and documents used during that deposition, as well as documents provided to the French court after the deposition. Mr. Lacroix's deposition was requested by Tyco in Case Number 1:04cv773, a patent dispute between Tyco Healthcare Group LP et al. (hereafter "Tyco") and Medrad, Inc. (hereafter "Medrad") involving U.S. Patent Nos. 6,339,718 and 6,643,537, in an attempt by Tyco to prove that the attached Medex references qualified under 35 U.S.C. § 102(b) as prior printed publications.

I hereby certify that this correspondence is being electronically filed with the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 25, 2007.



William L. Warren - Reg. No. 36,714

Medrad respectfully submits that the attached references, including the transcript of the deposition, do not support Tyco's argument, as advanced in Case No. 2:01-cv-01997 in the Western District of Pennsylvania involving U.S. Patent No. RE37,602 that the Medex references were printed publications for purposes of Section 102(b) because there is no documentary evidence that such materials were sufficiently disseminated to the relevant public prior to the critical date. *See Klopfenstein*, 380 F.3d 1345 (Fed.Cir.2004); *In re Cronyn*, 890 F.2d 1158 (Fed.Cir.1989). Notably, none of the exhibits from Mr. Lacroix's deposition identify any transactions involving the relevant injectors, and the relevant references, prior to the critical date of November 26, 1992.

Moreover, oral testimony alone cannot serve to invalidate a patent without further corroboration of such testimony with documentary evidence. *See Typeright Keyboard Corp. v. Microsoft Corp.*, 374 F.3d 1151, 1159-60 (Fed. Cir. 2004); *Lacks Indus., Inc. v. McKechnie Vehicle Components USA, Inc.*, 322 F.3d 1335, 1349-50 (Fed. Cir. 2003). In this instance, Mr. Lacroix and Medex, a competitor of Medrad, is not a disinterested party and therefore Mr. Lacroix's testimony, uncorroborated by any documents, cannot be used alone to conclude that the Medex references are printed publications for purposes of Section 102(b).

The parties subject to the Protective Order have subsequently agreed to waive the confidentiality of these documents and to permit Applicants to submit them to the Patent Office.

The citation of this information does not constitute an admission of priority or that any cited item is available as a reference, or a waiver of any right the applicant may have under applicable statutes, Rules of Practice in patent cases, or otherwise.

This Information Disclosure Statement is being filed pursuant to 37 C.F.R. § 1.97(d). Please charge Deposit Account 19-5029 in the amount of \$180.00 in payment of the fee under 37 CFR § 1.17(p). The undersigned attorney for applicant hereby certifies under Rule 97(e)(2) that no item of information contained in the accompanying Information Disclosure Statement was cited in a communication from a foreign Patent Office in a counterpart foreign application or, to the knowledge of the person signing the certification after making reasonable inquiry, was known to any individual designated in 37 CFR § 1.56(c), more than three months prior to the filing of this Information Disclosure Statement. No item of information contained in this Information

Seventh Supplemental IDS

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Please credit or debit Deposit Account 19-5029 as further necessary to ensure consideration of the disclosed information. Two duplicated copies of this paper are attached.

Consideration of the foregoing and enclosures plus the return of a copy of the enclosed Form PTO-1449 with the Examiner's initials in the left column per MPEP §609 are earnestly solicited.

Respectfully submitted,



William L. Warren

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Our Docket: 23578-0010